

SALES AGREEMENT

1500 GPM/750 GALLON CUSTOM WATER PUMPER

THIS SALES AGREEMENT is made and between the CITY OF NEWPORT, a municipal corporation of the State of Oregon (hereinafter CITY), and HME, Incorporated (hereinafter Vendor) for the purchase of a 1500GPM/750 Gallon Custom Pumper for the Newport Fire Department. All terms of the following documents are hereby incorporated into this Agreement by reference:

- a) Advertisement of Request for Proposal;
- b) Request for Proposal;
- c) Proposal Bond;
- d) Proposal Form;
- e) Performance Bond;
- f) Vendors Proposal; and
- g) Information Supplied by Vendor.

- 1.0 ACCEPTANCE.** The vendor agrees to sell and the City agrees to purchase the apparatus and equipment (collectively the "Vehicle") described in the specifications attached hereto and incorporated herein, in accordance with the terms and conditions herein and the Agreement documents described above.
- 2.0 DELIVERY.** Except as otherwise specified in this Agreement and provided that the City has paid the purchase price, the vehicle shall be ready for delivery within 270 calendar days after the date this Agreement is signed and executed by an officer of Vendor at Vendor's corporate headquarters in Wyoming, Michigan, and based upon a satisfactory completion of a Pre-Construction Conference, if requested. The Pre-Construction Conference shall be conducted within 30 days from the date of execution of this Agreement. Vendor will not be held liable for penalties and/or delays due to strikes, failures to obtain materials, fires, accidents, force majeure or other causes beyond Vendor's control. Delivery of the vehicle shall be delivered at Vendor's sole expense to the Newport Fire Department, 245 NW 19th Street, Newport, Oregon 97365
- 3.0 TERMS OF PAYMENT.** Vendor shall be paid by City upon the delivery and acceptance of the vehicle described, in the manner described in the Agreement documents, the purchase price of price of **Four-hundred thirty-seven thousand five hundred twenty-eight dollars (\$437,528.00)**. Payment shall be made payable to: HME, Incorporated, 1950 Byron Center Avenue, Wyoming, Michigan 49519. The Vehicle shall remain the property of Vendor and shall not be placed in service by City until the purchase price is paid in full. Any payment not made when due shall accrue a service charge of 1.5% per month.
- 4.0 PUBLIC CONTRACTING REQUIREMENTS.** Vendor shall comply with all federal, state and local laws and ordinances applicable to the work performed under this Agreement, including without limitation, applicable provisions of the Oregon Public Contracting Code, including ORS 279B.020, 279B.230, and 279B.235, as more particularly set forth in Exhibit A, attached hereto and incorporated herein by reference.
- 5.0 CHANGE ORDERS.** The parties acknowledge that any and all change orders may extend the completion and delivery dates of the Vehicle. Changes in major components, configuration, or other items that may change major components or

configurations (e.g.: engine, transmission, axles, water tank, body, fire pump) will not be allowed after the Agreement execution date.

5.1 If inability to obtain exclusive or brand name materials cause completion or delivery problems, Vendor shall advise City of said problems. Vendor will examine alternative sources of such materials. No substitutions shall be made without the execution of a written change order by the City.

5.2 Changes to the Agreement may be requested by the buyer after execution of the Agreement according to the terms of this section. Change Orders shall be prepared by sales representatives of Vendor and executed by City. Changes shall be sequentially numbered. Changes shall be reviewed for cost and schedule impact by Vendor. Price of the Vehicle may be adjusted to take into account any change order or deductive alternate requested.

6.0 SPECIFICATIONS: The Vendor warrants that all material and workmanship in and about the subject Vehicle shall be in compliance with the specifications identified in the Agreement documents.

7.0 WARRANTY: The Vendor shall provide the warranty as specified in the Agreement documents described herein.

8.0 INDEMNIFICATION. To the extent permitted by law, Vendor shall protect, defend and indemnify and hold the City harmless from and against all claims, demands, costs, damages, actions, liabilities, fines, penalties, judgments and attorney fees, resulting in the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement, or the Vendor's violation of any law, ordinance or regulation, contract provision or term or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City, Vendor waives any immunity it may have under the Oregon Tort Claims Act or Workers' Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the price of the Vehicle to be purchased under this Agreement reflects this negotiation.

9.0 ADDITIONAL ORDERS: Vendor may allow, at Vendor's sole discretion, the terms of this Agreement to be extended to the City and other similar agencies for the purchase of a similar Vehicle under similar terms for a period of one (1) year from the date of the execution of this Agreement.

10.0 APPLICABLE LAW: This Agreement shall be construed under the applicable laws of the State of Oregon.

11.0. VENUE: The parties do agree and consent to the jurisdiction of the Circuit Court of Lincoln County, Oregon, over all matters pertaining to this Agreement, including but not limited to the interpretation and enforcement of the terms of this Agreement

12.0 ENTIRE AGREEMENT: This Agreement constitutes the entire understanding between the parties relating to the subject matter herein. No modification, amendment or alteration shall be binding unless the same is reduced to writing and executed by authorized representatives of each of the parties.

13.0 SEVERABILITY: If any part, term, or clause of this Agreement is held by a court or arbitrator to be unenforceable, of no binding effect, or in conflict with applicable law, the


validity of the remaining provisions and clauses shall not be affected, and the rights and obligations of the parties shall be construed and in force as if the Agreement did not contain the particular part, term or clause held to be unenforceable.


14.0 ACKNOWLEDGMENT: Each party acknowledges for themselves that they have read, understand and agree to the terms of this Agreement and related documents.

IN WITNESS WHEREOF, City and Vendor have caused this Agreement to be executed in Duplicate parts by their duly authorized representatives on the dates subscribed below.

CITY
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

VENDOR
HME, Incorporated
1950 Byron Center Ave.
Wyoming, Michigan 49519

BY: 
Name: Spencer R. Nobel
Title: City Manager
Date: 07-14-15

BY: 
Name: Rick Vorel
Title: President
Date: 6/16/15